



SENATOR KEN ARMBRISTER  
*Chairman*  
 SENATOR ROBERT DUNCAN  
*Vice Chair*  
 SENATOR JANE NELSON

Brian K. Jammer, *General Counsel*

The Texas Senate  
 Committee on Criminal Justice

SENATOR MIKE JACKSON  
 SENATOR JOHN WHITMIRE  
 SENATOR ROYCE WEST  
 SENATOR FLORENCE SHAPIRO

Kelly Gilbert, *Committee Clerk*

November 1, 2000

The Honorable Rick Perry  
 Lieutenant Governor of the State of Texas  
 Post Office Box 12068  
 Austin, Texas 78711

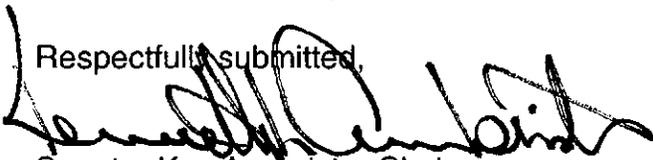
Dear Governor Perry:

The Senate Committee on Criminal Justice is pleased to submit its final report on Interim Charge Four. The mandate of Charge Four has prompted the Committee to:

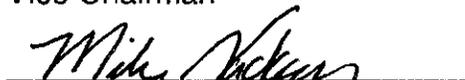
**Review the need for legal procedures and programs for children under the age of 10 who commit violent crimes so that they may receive necessary treatment and sanctions as part of the juvenile justice system (except for placement in the Texas Youth Commission) or a newly created separate system. The Committee shall consider whether a system, similar to the adult certification process for certain juvenile offenders, should be established that would certify a person under 10 years of age into the juvenile justice system.**

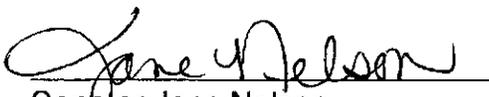
In compliance with your request, a copy of this report will be circulated to all Senators and other interested parties.

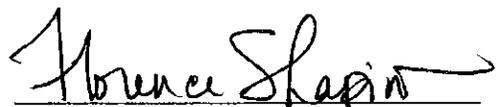
Respectfully submitted,

  
 Senator Ken Armbrister Chairman

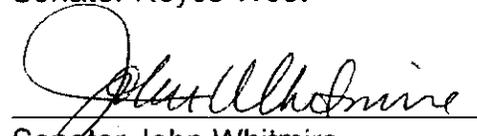
  
 Senator Robert Duncan  
 Vice Chairman

  
 Senator Mike Jackson

  
 Senator Jane Nelson

  
 Senator Florence Shapiro

\_\_\_\_\_  
 Senator Royce West

  
 Senator John Whitmire

## ACKNOWLEDGMENTS

The Senate Committee on Criminal Justice wishes to acknowledge the leadership and hard work offered by the members of the Violent Offenders Under Age Ten Workgroup, led by the capable staff of the Texas Juvenile Probation Commission.

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## **METHODOLOGY**

The Committee met in public hearing on March 22, 2000 and accepted invited and public testimony from those with interest in the topic. A list of the witnesses testifying and any pertinent written submissions are attached as Appendix A. Further, the Committee established a working group of experts and agencies familiar with intervention, evaluation and juvenile justice programs, and solicited the working group's input in developing a coordinated services model for children identified in this at-risk group. This report presents the conclusions of the Committee and the recommendations agreed upon by the agencies involved.

## **BACKGROUND**

Recently in Blythe, California the lifeless body of a three year old boy was found by his father lying in the back yard with a pillow covering his face. Authorities quickly determined that the culprits in his suffocation were his sister and cousin, ages six and five. A six year old boy in Mount Morris Township, Michigan brought a .32-caliber semi-automatic gun to his elementary school and used it to shoot and kill another six year old classmate. In Texas, boys aged seven, eight, and eleven were held on sexual assault charges stemming from the kidnapping and sexual assault of a three year old neighbor. In all instances all children were released to the custody of their parents or guardians.

Courts have long held that children committing these offenses do not belong within the juvenile justice system. According to legal experts, children younger than ten can rarely be shown to have the life experiences and cognitive skills necessary for a finding of fault sufficient to warrant punishment for anti-social conduct in the juvenile justice system. Most states follow this United States Supreme Court standard. Texas, as well as the states of Arkansas, Colorado, Kansas, Louisiana, Minnesota, Mississippi, Pennsylvania, South Dakota, Vermont and Wisconsin subscribe to this punishment standard. Only five states, North Carolina, Maryland, Massachusetts, New York, and Arizona provide for inclusion within their juvenile justice systems of those children 9 or younger, with North Carolina employing juvenile justice standards for children six or

older who commit offenses.

The Committee fully supports that conclusion and feels that any attempt to assert juvenile court jurisdiction over an individual younger than ten years of age would be difficult to support on constitutional grounds, and not in the best interest of the child or the greater society.

In Texas, it is difficult to determine with what frequency these offenses are occurring. There is no governmental entity with a legal mandate to gather and report statistical data on children under the age of ten who commit violent acts. Law enforcement agencies do not have jurisdiction over these youth. Though law local enforcement entities cannot formally arrest these children, often informal notations are kept and reported with their uniform crime statistics. The Texas Department of Public Safety (DPS) annually collects these voluntary submissions from local police departments and sheriffs offices regarding the number of offenses that occur within their jurisdictions. DPS has determined that, for the offenses of murder, capital murder, manslaughter, aggravated assault resulting in serious bodily injury, aggravated sexual assault, or causing serious bodily injury or serious mental deficiency, or impairment or injury to a child, elderly individual, or disabled individual, considered the most violent of crimes under Section 53.045 of the Texas Family Code, thirty five incidences were reported in 1998 and twenty six in 1999.

Most incidences noted in the DPS statistics for children under ten are considered aggravated assaults. Under Texas law, in the event that a victim survives such an assault, there are systems in place to provide rehabilitation and aftercare for the child who is the victim. For the perpetrators, still children themselves, no one system exists in our state to provide the necessary evaluation and corrective action. The Committee has undertaken a review of the current process of evaluation and rehabilitation for all children, victim and perpetrator, when the perpetrator is nine or younger.

## **CURRENT SERVICES**

When children who are under age ten commit these acts, there are a number of agencies that may potentially become involved with the child and family. Law enforcement is called to the scene to investigate the crime and to determine what immediate response will ensure continued public safety. The Child Protective Services division of the Texas Department of Protective and Regulatory Services (CPS or PRS) has the authority to conduct an investigation if there are allegations of abuse or neglect that meet statutory definitions and to take steps necessary to protect the child identified as the victim of the offense. The Texas Department of Mental Health and Mental Retardation (MHMR) has the authority to assess whether the child is a danger to himself/herself or others and requires commitment due to mental illness or mental retardation. The Texas Juvenile Probation Commission (TJPC), although experienced in assessing children who commit violent crimes, is unable to respond due to statutory limitations related to the age of the child.

## **Current Case Management Services**

Case management services to children under age ten who commit violent acts are not currently guaranteed to a family. Child Protective Services may provide those services if the child perpetrator is, or is at imminent risk of being, the victim of abuse or neglect. MHMR may provide case management services if the child perpetrator requires commitment as a result of mental illness or mental retardation. It is possible that in some cases, no outside intervention occurs and that locating services for the child is dependent upon the resourcefulness of the parent or caretaker. It is also possible that more than one agency provides case management services to the family.

## **Current Placement Services**

The child's parent or other legal caretaker may arrange and pay for residential services for the child. CPS is authorized to place children in protective care, but only if there is a finding of abuse or neglect and a resulting legal intervention into the parent/child relationship. MHMR is statutorily able to commit a child to an institutional setting only if the child is a danger to himself/herself or others as the result of mental illness or mental retardation.

## **GAPS IN THE CURRENT SYSTEM**

### **Case Management Gaps**

No single governmental agency is responsible for providing services to children under age ten who commit violent acts. Services to this population of children are fragmented and decisions made by individual agencies are often made in isolation. These children may be served by multiple agencies or, in some cases, not served at all. In accessing community-based services, families may be caught in a maze, being referred from service provider to service provider, before they find the appropriate service for their unique needs. Families looking for community resources could expect to present their situation to multiple agencies and experience a time delay in receiving services.

### **Placement Services Gaps**

The parent or caretaker is oftentimes responsible for locating and paying for placements for the child. Therapeutic residential treatment options are extremely limited for children under the age of ten. Only the most tenacious families are able to identify, locate, and obtain appropriate services for the child. Moreover, to the extent that private treatment options are available, they are inordinately expensive, placing the cost of such treatment beyond the reach of even the most well-intentioned families in most cases.

## **Data Collection and Reporting Gaps**

There is no requirement that an officer file a report if the child is under the age of ten. The same offense committed by a juvenile or adult would require a report.

No governmental entity gathers and reports statistical data, nor is there an agency to track the services provided or the outcomes for this population. As a result, the following information is not tracked and the following questions remain unanswered:

- How many children under the age of ten commit violent acts each year?
- How frequently does law enforcement use each of the currently available options?
- What percentage of these children receive services through the intervention of their families, MHMR or PRS?
- Are the services provided effective?
- What percentage of these children exhibit a need for treatment related to mental health issues?
- What percentage of these children have been abused or neglected?

## **PROPOSED ENHANCED SERVICES**

A comprehensive approach to coordinating the response from law enforcement, juvenile probation, health and human service agencies, courts and others is proposed in order to best protect the interests of both the child and the community. The focus of this proposed approach is to ensure that the root cause of the behavior is addressed rather than the behavior itself by providing consistent intervention and appropriate wrap-around services. Agencies, such as PRS and MHMR, are proposed to provide services within their current legal authority and agency mission, with an expanded requirement for cross agency coordination. PRS through its participation in local Community Resource Coordination Groups (CRCG) is proposed as the lead in coordinating services for these children, unless a more appropriate agency is identified based on the needs of the child and family. The State Community Resource Coordination Group (CRCG) is proposed as the lead in gathering reliable data from its local member CRCGs. The Criminal Justice Policy Council (CJPC) is proposed as the lead agency in analyzing this data.

## **A MULTI-AGENCY APPROACH TO PROVIDING SERVICES**

### **Enhanced Case Management Services**

- Law enforcement will continue to use its discretion as to whether the child can safely remain in the home. Law enforcement may take possession of the child without a court order if the following criteria are met:
  - there is probable cause to believe that the child, while younger than 10 years of age engaged in a specified violent act,
  - there is reason to believe that there is an immediate danger to the physical health or safety of the child or of others, as the result of mental illness or mental retardation, and
  - it would be contrary to the welfare of the child to remain in the home pending an investigation.
- If law enforcement takes possession of a child, they will continue to use their discretion in determining where the child should be taken. Options include the following:
  - the nearest medical facility, if the child is in need of emergency medical care, or
  - the nearest mental health facility, if the child appears to be mentally ill and a danger to themselves or others,
  - a person designated by PRS, if the child appears to be a victim of abuse or neglect,
  - Law enforcement will also have the option of transporting the child to an evaluation and processing office designated by juvenile court, which may be located in a police

facility or sheriff's office but may not be a cell or holding facility used for detentions other than detentions of this nature.

- If the child is taken into possession by law enforcement without a court order and PRS has probable cause to believe that the child should remain outside of the home, PRS should immediately initiate court proceedings with the district court.
- Regardless of the immediate disposition of the child, the law enforcement officer will prepare an incident report and deliver a copy of the report to PRS within 24 hours of the incident.
- PRS will open a file on the case and immediately transmit a copy of the incident report to the state CRCG, the appropriate local CRCG and the local juvenile probation department for action.
- Within 5 working days, the local CRCG will assemble local community participants and the family to develop an individualized case plan for the child. PRS will be the lead agency for case management and information gathering purposes, however, the CRCG may designate a different agency based on case circumstances. Members of the CRCG team may include personnel from PRS, MHMR, Texas Department of Health, Texas Youth Commission, the local juvenile probation department, Texas Rehabilitation Commission, Texas Commission for the Blind and the independent school district in which the child is enrolled. The child's parent or caretaker, local providers and other organizations may also attend the CRCG meetings.

- Local CRCGs may also utilize Texas Integrated Funding Initiative (TIFI) consultants to assist in developing a comprehensive case plan for the child and family.

### **Enhanced Placement Services**

- A central pool of dollars should be appropriated to the state CRCG through the Health and Human Services Commission, from which the local CRCGs can purchase enhanced services, including residential treatment, for this group of children and their families.

### **Enhanced Data Collection and Reporting**

- The Criminal Justice Policy Council (CJPC), with the assistance of the Department of Protective and Regulatory Services and the Department of Mental Health and Mental Retardation, will develop a reporting instrument to be used by the agencies involved so that they may compile data on the size, characteristics, location and treatment needs of this population of children.
- The State CRCG will collect reliable data from local CRCGs and administer the data collection system.

- Using the data collected, CJPC will prepare a report for the 78<sup>th</sup> Legislature. The report prepared by CJPC will address each of the following:
  - Number, location and other demographic information of the children committing violent acts.
  - Percentage of the violent acts committed requiring "sexual offender" treatment or therapy as determined by the CRCGs.
  - Percentage of these children referred and determined in need of inpatient or outpatient mental health services as determined by the CRCGs.
  - Percentage of these children referred to PRS and determined in need of services and/or removal from the home as reported by PRS to the CRCGs.

**Estimated Fiscal Impact of  
Report Recommendations from the Senate Criminal Justice Committee**

Charge	Recommendation	First Full Year Probable Savings/(Cost)/Gains/(Losses)	Estimate Source	Comments
4	<p>4.1 Proposes a comprehensive approach to coordinating the response from law enforcement, juvenile probation, and health and human service agencies, courts and others to enhance services to ensure root cause of behavior is addressed rather than the behavior itself by providing consistent intervention and appropriate wrap-around services. PRS and MHMR are proposed to provide services within their current legal authority, with an expanded requirement for cross agency coordination. In addition, CJPC is proposed as the lead in analyzing that data regarding the size, characteristics and treatment needs of the under age 10 population and reporting this information to the legislature.</p>	<p>GR (\$1,153,905) Federal Funds (\$119,715) <u>All Funds (\$1,273,620)</u></p>	<p>Dept. of Mental Health and Mental Retardation (MHMR), Dept. of Protective and Regulatory Services (PRS), Health and Human Services Commission (HHSC), Criminal Justice Policy Council (CJPC)</p>	<p>HHSC assumes that a formula would be developed to distribute the funds to the local Community Resource Coordination Groups (CRCGs) and HHSC would monitor the expenditures. This fund would be financed by the participating CRCG agencies through interagency contract and by new appropriations to HHSC. PRS assumes that 30 children would qualify for this pool. Residential treatment is likely and the approximate monthly cost is \$6,000 (based on PRS foster care rate of level 6). HHSC assumes 30 children under the age of 10 would be served at 6 months stay for an approximate cost of \$1,000,000. Additionally, funds for other services of \$5,000 per child for a total of \$150,000 are needed. HHSC assumes these client service dollars totaling \$1,150,000 annually would be new appropriations with GR funds. PRS assumes that serving these additional children would require the addition of 2.5 FTEs to provide case management and support. No significant fiscal implication to units of local government is anticipated</p>
4	<p>4.2 Enhance case management services by law enforcement continuing to use its discretion as to whether a child can safely remain home, and in determining where a child should be taken.</p>			
4	<p>4.3 Appropriate a central pool of dollars to the state CRCG, from which local CRCGs can purchase enhanced services, including residential treatment, for this group of people and their families.</p>			
4	<p>4.4 Require CJPC to enhance data collection and reporting through the development of a reporting instrument used by the agencies where the state will collect reliable data from the local CRCGs, and using that data CJPC will prepare a report for the 78th Legislature.</p>	<p>No Fiscal Impact</p>	<p>Criminal Justice Policy Council</p>	

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## **Appendix A – Witness List and Testimony**

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**WITNESS LIST**

Criminal Justice Committee

March 22, 2000

**INTERIM CHARGE 4**

Nancy Arrigona	Criminal Justice Policy Council	Austin
Deborah Berndt	TX Mental Health & Mental Retardation	Austin
Gloria Black	TX Education Agency	Austin
Thomas Chapmond	TX Dept. of Protective & Regulatory Services	Austin
Grace Davis	Office of the Attorney General	Austin
Robert Dawson	Self	Austin
Sherri Hammack	Community Resource Coordination Groups (CRCG)	Austin
Billy Jacobs	TX Education Agency	Austin
D'Ann Johnson	TX Criminal Defense Lawyers Association	Austin
Bobbie Pratt	Self	The Woodlands
Wesley Shackelford	TX Juvenile Probation Commission	Austin
Sarah Webster	TX Dept. of Protective & Regulatory Services	Austin



# Criminal Justice Policy Council

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*Tony Fabelo, Ph.D., Executive Director*

## Memorandum

**To:** Brian Jammer  
Senate Criminal Justice

**From:** Nancy Arrigona *NA*

**Subject:** Procedure for reporting arrests to Department of Public Safety (DPS)

**Date:** March 21, 2000

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The Department of Public Safety is responsible for the collection, validation, and tabulation of Uniform Crime Reports (UCR) received from all reporting jurisdictions in Texas. UCR information includes both reported crimes and arrests and is voluntarily reported by law enforcement agencies throughout the state. In 1998, the Department of Public Safety received reports of crimes and arrests from 947 law enforcement agencies statewide. These agencies accounted for 99.7% of the state's population.

Law enforcement agencies have the authority to arrest or bring into custody persons ten years of age and older if probable cause that the person committed an offense exists. Arrests are tallied and are reported in the aggregate to DPS by gender, race, ethnicity, age category, and offense. Although not under law enforcement jurisdiction, arrests of youth under the age of ten may be reported to DPS in the "under 10" age category. In 1998 law enforcement agencies reported 1,464 arrests of children under the age of ten, 36 of these arrests were for violent offenses.

While the arrests of youth under the age of ten appear in the DPS Uniform Crime Reports, they may not represent a complete picture of the offenses committed by these youth. It is difficult to determine the exact number and nature of offenses committed by youth under the age because of the following:

- Law enforcement agencies do not have jurisdiction over youth under the age of ten so may not consistently include these "arrests" in uniform crime reporting statistics.
- Law enforcement officers may issue "warnings" to youth and juveniles that are not included in the UCR arrest statistics.
- Offenses committed by youth under ten may not be reported to law enforcement.
- Information is not available to verify arrests of youth under ten. Law enforcement agencies must destroy all information relating to the arrest of a child unless that child is referred to the juvenile court or placed into a first offender program. A youth under the age of ten may not be referred to juvenile court or placed into a law enforcement first offender program.
- The offense reported in the arrest may not be supported by probable cause – or more simply, the arresting offense may be more severe than the offense for which the child could be adjudicated.

TEXAS EDUCATION AGENCY  
STATEWIDE DISCIPLINARY STUDENTS UNDER AGE 10  
BY REASON AND ACTION  
PEIHS 1998-99 DATA

DISCIPLINARY REASON	DISCIPLINARY ACTION											TOTAL
	CONTINUATION OTHER DIST AEP	CONTINUATION OTHER DIST EXPULS	EXPULSION TO AN OFF-CAMPUS ACP	EXPULSION TO AN ON-CAMPUS AEP	EXPULSION TO JJAEP	IN-SCHOOL SUSPENSION	OTHER	OUT-OF-SCHOOL SUSPENSION	PLACEMENT IN ON/OFF CAMPUS AEP			
DISCIPLINARY REASON	0	0	5	0	0	0	46	0	7	2	60	
ABUSE OF GLUE OR AEROSOL PAINT	1	0	1	2	0	156	8	106	8	282		
AGGRAVATED/AGG. SEXUAL ASSAULT	0	0	2	0	0	5	0	20	1	28		
ARSON	0	0	7	6	12	1,703	9	1,554	209	3,501		
ASSAULT OR TERRORISTIC THREAT	0	0	0	0	0	66	0	18	4	88		
CONDUCT PUNISHABLE AS A FELONY	0	0	0	3	2	278	0	171	5	459		
CRIMINAL MISCHIEF	3	0	49	106	93	17,366	74	7,224	986	25,901		
DISRUPTIVE BEHAVIOR 37.002	0	0	0	0	0	8	2	6	5	21		
EMERGENCY PLACEMENT/EXPULSION	0	0	0	0	1	2	0	1	0	4		
HEARING OFFICER DETERMINATION	0	0	0	0	0	4	0	8	2	14		
INDECENCY WITH A CHILD	0	0	0	0	0	1	0	0	0	1		
MURDER, ATTEMPTED MURDER	0	0	0	0	0	1	0	0	0	1		
OFF CAMPUS FELONY IN TITLE 5	0	0	0	0	0	2	0	1	2	6		
OFF CAMPUS FELONY NOT TITLE 5	0	0	0	0	0	5	0	1	0	6		
OTHER	1	2	1	11	12	1,474	19	336	39	1,895		
OTHER REASON IN STUDENT CODE	4	0	23	29	58	10,101	175	3,636	537	14,564		
POSSESSED SOLD CONTROLLED SUB	0	0	0	2	0	16	1	16	5	40		
POSSESSED ALCOHOLIC BEVERAGE	0	0	3	1	9	14	0	15	2	44		
POSSESSED AN ILLEGAL KNIFE	2	0	6	6	7	153	0	209	37	422		
POSSESSED CLUB	0	0	0	2	1	10	0	3	0	16		
POSSESSED FIREARM	0	0	0	1	0	16	0	15	10	42		
POSSESSED WEAPON	0	0	0	3	3	187	3	210	18	424		
PUBLIC LEWDNESS	0	0	0	0	2	184	1	184	89	460		
RETRIBUTION AGAINST SCHOOL EMPLOYEE	0	0	3	0	4	43	2	148	11	211		
SERIOUS MISCONDUCT IN AEP	0	0	0	1	3	144	1	112	105	368		
VIOLATION NOT IN SECT 37.006	3	6	26	131	25	14,069	103	7,632	844	22,842		
TOTAL	14	8	126	304	232	46,053	398	21,633	2,921	71,699		

**Services to Children Under Age Ten  
At Risk of Involvement in the Juvenile Justice System**

**Texas Department of Mental Health and Mental Retardation**

***In FY 99:***

- 13, 276 children under age ten received community-based services through local mental health authorities. Availability of services varies by community but includes assessment, counseling, skills training, medication and medication management, service coordination, day treatment, therapeutic foster care, family support and crisis services, including psychiatric hospitalization.
- Of the total served, 973 children (7%) were identified and treated through the First Time Offender (FTO) program as children at risk of involvement in the juvenile justice system. This "at risk" status was based on a child's having exhibited behavior such as aggression to people or animals, destruction of property, deceitfulness or theft, or serious violation of rules.

***Child Characteristics of Children Under Age Ten in the FTO program***

***Ethnicity***

- Asian: .5%
- Black: 26.4%
- Hispanic: 23.8%
- Native American: .2%
- Anglo: 47.1%
- Other: 1.8%

***Diagnoses***

- A.D.H.D.: 52.3%
- Conduct disorder/oppositional defiant disorder: 12.1%
- Mood/bipolar depression: 12.9%
- Anxiety disorder: 3.4%
- Impulsive disorder: 1%
- Substance abuse: .1%
- Schizophrenia: 1.5%
- Other Axis I: 1%

***Critical Incidents in Personal History***

- Ran away from caregiver or home: 7.3%
- Set fire: 10.1%
- Destroyed property: 37%
- Physically aggressive towards others: 57.5%
- Sexually aggressive towards others: 6.2%
- Involved in other criminal activity: 8.5%
- Ingested alcohol or drugs: 2.1%
- Involved in self-abusive or destructive behavior: 19.5%
- Attempted or had suicidal ideation: 15.4%
- Experienced parental neglect: 5.6%
- Was physically abused: 3%
- Was sexually abused: 1.3%
- Experienced family violence: 7.3%
- Was truant: 3.7%
- Suspended or expelled from school or daycare: 17.5%
- Assigned to special education: 14.4%



## Senate Committee on Criminal Justice Information Packet - Charge #4

Review the need for legal procedures and programs for children under the age of 10 who commit violent crimes so that they may receive necessary treatment and sanctions as part of the juvenile justice system (except for placement in the Texas Youth Commission) or a newly-created separate system. The Committee shall consider whether a system, similar to the adult certification process for certain juvenile offenders, should be established that would certify a person under 10 years of age into the juvenile justice system.

*Texas Juvenile Probation Commission  
Vicki Spriggs, Executive Director  
P.O. Box 13547  
Austin, Texas 78711  
[www.tjpc.state.tx.us](http://www.tjpc.state.tx.us)  
(512) 424-6700*

*March 22, 2000*

Texas Department of Public Safety 1998 Arrest Data  
 - Criminal Offenses Committed by  
 Children 9 Years of Age and Younger

CLASSIFICATION OF OFFENSES	SEX	NUMBER
Murder and Non-Negligent Manslaughter	Male	0
	Female	1
Manslaughter by Negligence	Male	0
	Female	0
Forcible Rape	Male	3
	Female	0
Robbery	Male	1
	Female	0
Aggravated Assault	Male	26
	Female	5
Burglary--Breaking or entering	Male	82
	Female	6
Larceny--Theft (Except Motor Veh. Theft)	Male	192
	Female	72
Motor Vehicle Theft	Male	8
	Female	0
Other assaults	Male	106
	Female	26
Arson	Male	35
	Female	0
Forgery & Counterfeiting	Male	4
	Female	2
Fraud	Male	0
	Female	0
Embezzlement	Male	0
	Female	0
Stolen Property: Buying, Receiving, Possessing	Male	1
	Female	0
Vandalism	Male	146
	Female	15

CLASSIFICATION OF OFFENSES	SEX	NUMBER
All Other Gambling	Male	0
	Female	0
Offenses Against Family and Children	Male	3
	Female	4
Driving Under the Influence	Male	8
	Female	2
Liquor Laws	Male	7
	Female	2
Drunkenness	Male	23
	Female	5
Disorderly Conduct	Male	80
	Female	13
Vagrancy	Male	1
	Female	0
All Other Offenses (Except traffic)	Male	191
	Female	48
Suspicion	Male	0
	Female	0
Curfew and Loitering Law Violations	Male	41
	Female	11
Runaways	Male	146
	Female	113
TOTAL	Male	1132
	Female	332

## Lowest Age for Original Juvenile Court Jurisdiction in Delinquency Matters

6 Years	7 Years	8 Years	10 Years
North Carolina	Maryland Massachusetts New York	Arizona	Arkansas Colorado Kansas Louisiana Minnesota Mississippi Pennsylvania South Dakota Texas Vermont Wisconsin
<b>Either Common Law Presumption of Age 7 or Not Specified in Statute</b>			
Alabama	Idaho	Montana	Oregon
Alaska	Illinois	Nebraska	Rhode Island
California	Indiana	Nevada	South Carolina
Connecticut	Iowa	New Hampshire	Tennessee
Delaware	Kentucky	New Jersey	Utah
District of Columbia	Maine	New Mexico	Virginia
Florida	Maryland	North Dakota	Washington
Georgia	Michigan	Ohio	West Virginia
Hawaii	Missouri	Oklahoma	Wyoming

*Source: Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*  
**OJJDP**  
 December, 1998

# Texas Criminal Defense Lawyers Association



## The Need for Legal Procedures and Programs for Children Under the Age of 10 for Treatment and Sanctions as Part of the Juvenile Justice System

### Testimony before the Senate Criminal Justice Committee

March 22, 2000

Good afternoon, Senator Armbrister and members of the Committee. Thank you for the opportunity to address you on this important issue. My name is D'Ann Johnson. I am the Executive Director of the Texas Criminal Defense Lawyers Association.

TCDLA supports a long-term strategy that reduces known risk factors for criminal activity. The risk factors for delinquency are well known. They include:

- child abuse and neglect
- unstable family
- poverty
- mental health problems
- prevalence of firearms
- abnormal brain development
- parent has done time

While we applaud the interest in early intervention programs, these programs may begin too late to adequately reduce juvenile delinquency. Research found in the Juvenile Justice report compiled by the National Conference of State Legislatures indicates that neural connections that

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regulate responses to stress are formed in the first thirty-three months of life. Many states have responded to this information with laws to strengthen early childhood programs. In Texas, we still do not have mandatory kindergarten.

As we heard during the last public hearing, 50% of the girls in the Texas Youth Commission suffer from post-traumatic stress syndrome. This means that we have children who have life experiences equivalent to living in a war zone. Without reduction in the conditions that result in such trauma to children, progressively more severe sanctions for juveniles simply will not be effective.

Studies by the Criminal Justice Policy Council show that currently there are not enough beds for the treatment needs of children in TYC. Of the 5,267 juveniles in the system in 1998, 80% needed substance abuse treatment and 30% had severe emotional needs. Yet there were only 341 beds for the emotionally disturbed and 313 for chemical dependency.

The problem with this approach is that services may not kick in until a delinquent act occurs. Appropriation of funds in the criminal justice system diverts funds from education, health and mental health programs that may actually reduce the problematic behaviors. Calling these children "offenders" at such an early age is a recipe for failure. It appears that these kids are not on the college-bound program but the TDC-bound program. We should look to alternate and cost-effective solutions.

The recommendations by the Justice Department, the American Bar Association, and the Center for Disease Control are all similar. The most important factor in reducing juvenile delinquency is a strong family. Yet no state gives single moms enough support to live at the federal poverty level. Texas has the highest teenage pregnancy rate and children of these young mothers are at high risk for anti-social behaviors. Funding day care centers, Head Start, after school programs and recreational centers in poor neighborhoods reduces the incidence of juvenile arrests. The Massachusetts and Utah experiments have been very successful in reducing recidivism. Texas should look to these models.

If Texas adds children to the criminal justice system under the age of ten, procedures should ensure that ad litum attorneys are appointed as soon as the child enters this system. The long-term consequences of this type of

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intervention can result in confinement and the children should have legal representation.

TCDLA urges you to consider long-term successful strategies for helping children find success. Otherwise, we are simply identifying future residents of the Texas prison system at an earlier age. Thank you again for this opportunity.

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# Boys ages 7, 8 and 11 held in sexual assault of girl, 3

4-14-98

## No charges can be filed against younger pair

By Stephen Power  
and Brenda Rodriguez

Staff Writers of The Dallas Morning News

Three boys — ages 7, 8 and 11 — have been taken into custody in connection with the kidnapping and sexual assault of a 3-year-old girl in their West Dallas neighborhood, authorities said Monday.

The boys, police said, clubbed the girl with a brick and shoe, stripped and sexually assaulted her and then dragged her across a concrete aqueduct Thursday before leaving her bleeding, bruised and naked in a creek bed.

"This case has shocked even the detectives who work here," said Lt. Bill Walsh, who supervises the

child exploitation squad. "On a continuum of offenses, this has got to be among the most horrible. At that age, creek beds should be places to play tag, not commit crimes."

Police said they expect the 11-year-old to face a charge of juvenile delinquency/aggravated sexual assault, but no charges can be filed against the other boys because of their age. Children younger than 10 cannot be held criminally responsible for their actions, officials said.

The girl was found about 8:30 p.m. Thursday, about two hours after her mother reported her missing from the family's front yard. The girl was wandering down a

Please see GIRL on Page 8A.

# Girl, 3, sexually assaulted; boys, ages 7, 8, 11, in custody

Continued from Page 1A.

street near her home when a family member spotted her and brought her home, police said.

The girl was taken to Children's Medical Center, where she was treated for her injuries. She was released from the hospital later the same night in good condition.

The oldest boy has been placed in juvenile detention, and the younger two — who are brothers — were removed from their home Monday afternoon by social workers, said a Child Protective Services official.

The families of the boys could not be reached Monday. The girl's grandfather said Monday that his family is hoping that with time the girl will forget the night she was

attacked.

"Every time I think about it, I get angry," said the grandfather, who is not being named to protect his granddaughter's identity. "Nobody knows what it's like ..."

On Friday, the victim's mother said her daughter is traumatized.

"She went through a lot," said the woman, who is not being named.

The Dallas Morning News generally does not name alleged victims of sexual assault or juvenile crime suspects.

Minutes after the girl was found, officers discovered her clothes and tennis shoes in an aqueduct near the corner of Bernal Drive and Westmoreland Road.

On Friday morning, a call from a school official led police to Earhart Learning Center, where they questioned the 7-year-old. Lt. Walsh said the boy had admitted participating in the crime while being disciplined by the school principal for another matter.

In his statement to detectives, the 7-year-old also implicated his 8-year-old brother and the 11-year-old, both of whom attend nearby Carver Learning Center, police said.

Lt. Walsh said the 8-year-old also admitted participating in the assault, but he declined to say whether the 11-year-old did.

Lt. Walsh said he did not know

from his conversations with investigators whether the attack was planned or spontaneous.

"The 7-year-old said that all three removed the girl's clothing, struck her in the head with a shoe and with a brick and dragged her naked body across the concrete embankment," he said.

The boys "threw her into the standing water" when they finished assaulting her, Lt. Walsh said.

Since the younger boys can't be charged, Lt. Walsh said police plan to use them as witnesses against the 11-year-old. Under juvenile sentencing guidelines, officials said, the 11-year-old could be given up to 40 years in state custody if a grand jury approves a petition for deter-

minate sentencing.

The girl's mother said she discovered her daughter missing shortly after arriving home about 6:30 p.m. Thursday.

She said she had gone inside her home to call her husband and left the girl in the family van outside.

When she returned, she said, the child was gone.

"I thought maybe she had gone to my sister's house," she said. "Everything happened so quickly. All the kids were all outside. I just assumed she had gone over there."

She said she was angry that the two brothers suspected in the attack were playing outside in their yard Friday, just around the corner from her home.

"They are a danger to other children. They are not acting like children. Their actions are like adults," she said.

She said the two boys roam the neighborhood streets in the evenings and sometimes ask neighbors for food.

CPS officials said the brothers were being placed in an emergency shelter for now. Lt. Walsh said the 11-year-old was preparing to undergo a psychological evaluation late Monday.

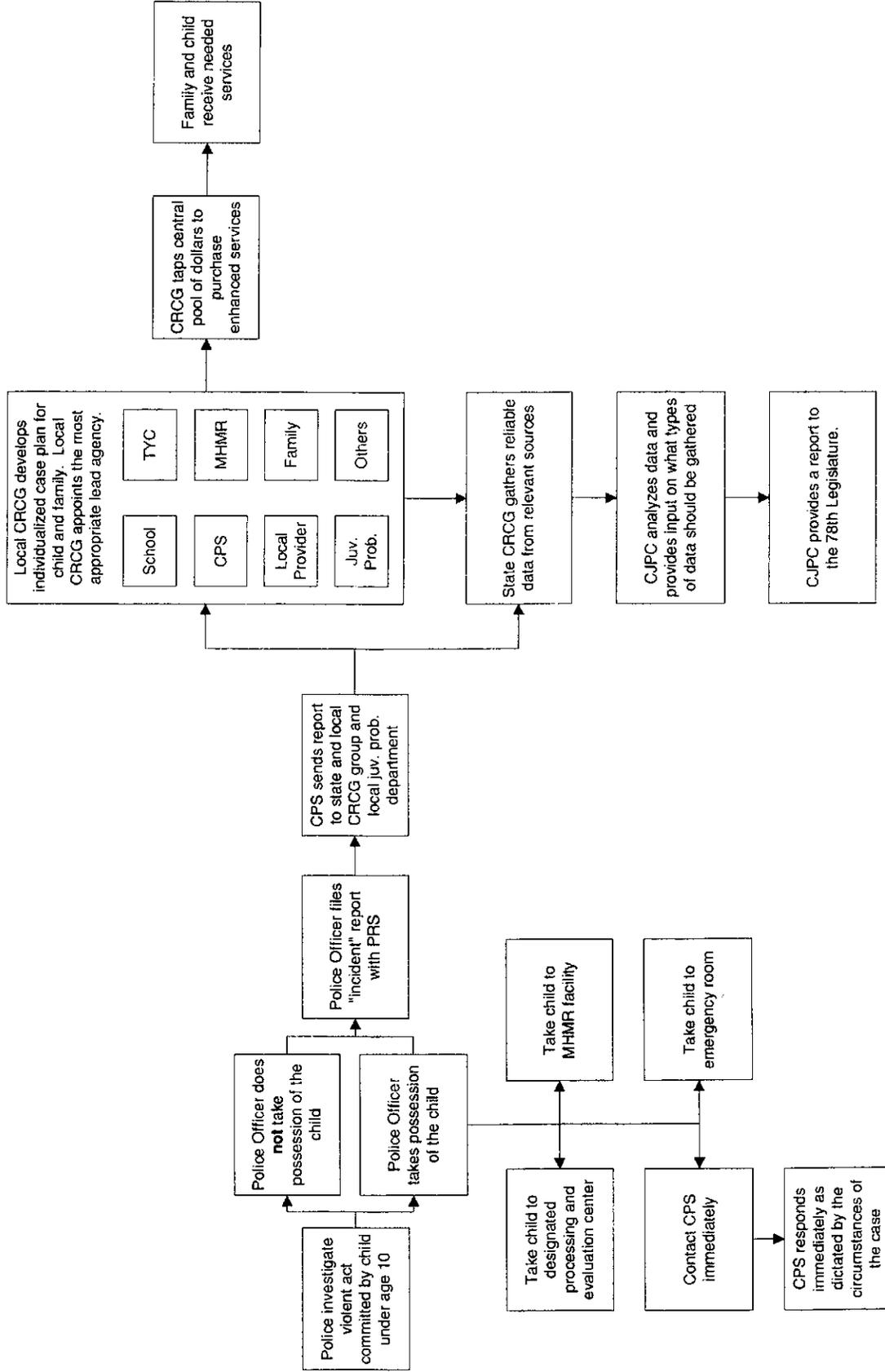
"I told them, 'You don't want to let this kid out,'" Lt. Walsh said. "He is the only one charged in this horrible attack, and it wouldn't make sense to have him out on the streets."

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## **Appendix B – Flowchart of Proposed Enhanced Services**

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# Proposal – Services to Children under Age 10 Who Commit Violent Acts



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**Appendix C – Law Changes Required to Implement  
Proposed Enhanced Services**

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## **Chapter 261. Investigation of Report of Child Abuse or Neglect**

**(new subchapter below)**

### **Subchapter F. Investigation of Violent Act by Child Under Ten Years of Age**

#### **§ 261.501. Investigation of Violent Act; Taking Possession of Child**

- (a) A law enforcement officer shall take possession of a child on authority of a court order entered under subsection (c).
- (b) A law enforcement officer may take possession of a child without a court order if:
  - (1) there is probable cause to believe that the child, while younger than 10 years of age, engaged in conduct that if engaged in by an adult would violate:
    - (A) Section 19.03 Penal Code (capital murder),
    - (B) Section 19.02 Penal Code (murder),
    - (C) Section 19.04 Penal Code (manslaughter),
    - (D) Section 22.02(a)(1) Penal Code (aggravated assault resulting in serious bodily injury),
    - (E) Section 22.021(a)(1)(A) and (a)(2)(A)(i) Penal Code (aggravated sexual assault), or
    - (F) Section 22.04(a)(1) or (2) Penal Code (causing serious bodily injury or serious mental deficiency, impairment or injury to a child, elderly individual, or disabled individual);

(2) there is reason to believe that there is an immediate danger to the physical health or safety of the child or of others; and

(3) it would be contrary to the welfare of the child to remain in the home pending an investigation under this subchapter.

(a) Upon the filing of a petition for investigation supported by affidavit, and a finding that the circumstances described in subsection (b) exist, a court may authorize a law enforcement officer to take possession of a child for investigation of a violent act. The court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing of a petition under this subchapter and before the hearing provided by Section 261.513.

(b) Regardless of the immediate disposition of the child, the law enforcement officer shall prepare an incident report as mandated by this subchapter and deliver a copy of the report to the Department of Protective and Regulatory Services.

**Comment**

*Since there is by definition a serious allegation of violence and the child's mental health must be assessed, the only persons authorized to take possession of the child initially are peace officers. Subsection (b)(1) states the Fourth Amendment standard of "probable cause" to believe conduct has occurred that had it been engaged in by an adult would violate the listed penal laws. In terms of risk of error, this standard is substantially the same as the standard expressed in § 262.104 referring to "facts that would lead a person of ordinary prudence and caution to believe" circumstances exist that under the law*

*authorize taking possession of the child. "Probable cause" is used because this section will initially be invoked by a law enforcement officer. Law enforcement officers are familiar with the concept of "probable cause" because that is the standard required by the Fourth Amendment for making an arrest. The standard in (b)(2) of "reason to believe" approximates the probable cause standard. The third prong of the test for immediate removal for investigation is that remaining in the home pending investigation would be contrary to the child's best interest.*

*Subsection (a) deals with the situation in which a petition for investigation has been filed and probable cause, immediate danger, and "contrary to welfare" findings were made by the court before the child was taken into custody.*

*Finally, Subsection (d) provides that regardless of the temporary action taken with respect to the child [detention for mental examination, removal for abuse or neglect investigation, or remaining at home pending investigation], the law enforcement officer shall complete an incident report so that further investigation and services may be provided.*

#### **§ 261.502. Disposition of Child Taken Into Possession**

- (a) The person taking possession of a child under Section 261.501 shall immediately notify the department and, without unnecessary delay and without first taking the child elsewhere, do one of the following:

- (1) obtain emergency care, including taking the child to a medical facility if the child is in need of emergency medical care;
  - (2) transport the child to a facility described in Section 573.001(d), Health and Safety Code and file an application for detention pursuant to Section 573.002, Health and Safety Code, if the child appears to be mentally ill and because of the mental illness there is a substantial risk of serious harm to the child or to others unless the child is immediately restrained;
  - (3) deliver possession of the child to a person designated by the Department of Protective and Regulatory Services, if the child appears to be a victim of abuse or neglect and possession is appropriate under section 262.104 of this code;
  - (4) transport the child to an evaluation and processing office described in section 261.506; or
  - (5) deliver the child to a person designated by the department for the purpose of further investigation.
- (b) When a child is taken into possession under this subchapter, that child may not be held in isolation, or in a jail, secure detention facility, or, except as provided in section 261.504, in a juvenile secure detention facility.
- (c) The Department of Protective and Regulatory Services shall, immediately upon being notified that the child has been taken into possession under this subchapter, have the authority to consent to interviews and examinations of the

child, including medical or psychiatric examinations care, and to arrange for substitute care if necessary. This provision does not limit the authority of the department under subchapter D or any other provision of law.

**COMMENT:**

*This section provides a list of options for the law enforcement officer to use after notification to the department with respect to placement of the child. These are not listed in any particular order; it may or may not be necessary for the officer to transport the child again after emergency medical care. Subsection (b) limits the places where a child may be held during the investigation. Subsection (c) gives the department authority to provide for necessary substitute care and to arrange for medical examinations and care pending court orders. If it is unclear whether the child should be returned home, placed in a mental health facility or provided with other substitute care, the officer may take him or her to an evaluation office for up to 6 hours.*

**§ 261.503. Mental Health Examination and Treatment**

- (a) If the child is taken to a mental health facility under this subchapter, staff at that facility shall promptly examine the child to determine whether the child qualifies for and is in need of mental health services.
- (b) If the mental health facility determines that the child does not qualify for inpatient mental health services, it shall notify the department and shall release the child to the person or facility designated by the department.
- (c) If the mental health facility determines that the child qualifies for inpatient mental health services, it shall notify the department and promptly arrange for inpatient services or, if necessary, initiate mental health commitment proceedings.

(d) If the child is accepted by, admitted to or committed to an inpatient mental health facility, the child shall be cared for, treated and released in conformity with Subtitle C, Title 7, Health and Safety Code. When the inpatient mental health facility releases the child, it shall release the child to the person or facility designated by the department unless the court has issued an order returning the child to the parent or parents or placing the child with another person, in which event the facility shall release the child to the person designated by the court.

**Comment**

*This section provides that a child requiring inpatient care shall be cared for, treated and released under provisions of the Health and Safety Code. If the child is not accepted or admitted, the mental health facility shall release the child to the department, unless a court has ordered otherwise.*

**§ 261.504. Evaluation and Processing Office**

(a) The juvenile board may designate an office or a room, which may be located in a police facility or sheriff's offices, as an evaluation and processing office for the temporary detention of a child taken into possession under section 261.501. Except as provided by subsection (d), the office may not be a cell or holding facility used for detentions other than detentions under this section. The juvenile board by written order may prescribe the conditions of the designation and limit the activities that may occur in the office during the temporary detention.

- (b) A child may not be left unattended in an evaluation and processing office.
- (c) A child may not be detained in an evaluation and processing office for longer than six hours.
- (d) The evaluation and processing office may be the same space designated under Section 52.025 as a juvenile processing office, under Section 52.027 as a place of non-secure custody or under Section 52.028 as a juvenile curfew processing office, but may not be used as an evaluation and processing office at the same time it is used for one of the other permitted uses.

**§ 261.505. Department Placement of Child**

- (a) Upon notification under section 261.502 or 261.503 that a placement for the child is needed, the department shall arrange for return of the child to an appropriate parent, guardian or caretaker unless the department determines that such a course of action is not in the best interest of the child.
- (b) Unless the child is returned to a parent, guardian or caretaker, the department shall make appropriate arrangements for interim care pending court hearings.
- (c) If after reasonable, diligent effort appropriate interim care for the child cannot be arranged by the department, it may place the child with the juvenile probation department of the county in which the conduct described in section 261.501(b) is believed to have occurred.

**§ 261.506. Temporary Residence in Juvenile Secure Detention Facility**

- (a) A juvenile probation department that receives a child under this section shall find suitable interim care for the child, which, if other placements are unavailable may

include a juvenile secure detention facility in the county or under contract with that department.

(b) Notwithstanding any restriction in Title 3, a child shall be admitted by a juvenile secure detention facility upon placement by a juvenile probation department under this section.

(c) Staff of a juvenile secure detention facility in which a child is placed under this section shall to the extent feasible keep the child separate from other children detained in the facility.

(d) A child may not be retained in a juvenile secure detention facility for longer than needed for the department to obtain suitable care for the child, but in no event for more than 48 hours.

(e) The department shall resume possession of the child and remove the child from a juvenile secure detention facility when suitable interim care is found for the child or when the child has been in a juvenile secure detention facility for 48 hours, whichever occurs first.

**Comment**

*If out-of-home care is necessary and not available, the child may be placed up to 48 hours in a Juvenile Probation facility within limits set by this section.*

**§ 261.507. Notice to Parent, Conservator, or Guardian**

- (a) The department must give written notice as prescribed by this section to each parent of the child and to the child's guardian or caretaker, if any, as soon as practicable after the department has been notified that a law enforcement officer has taken possession of a child under section 261.501.
- (b) The written notice must include the name of the person at the department that the parent, guardian or caretaker may contact for information relating to the child or a legal proceeding relating to the child.
- (c) The written notice may be waived by the court at the initial hearing:
  - (1) on a showing that the parents, conservators, or other custodians of the child could not be located; or
  - (2) for other good cause.

**Comment**

*This section mirrors Section 262.109 requiring notice to parents and others when possession of a child has been assumed, however, since the "legal rights" will vary greatly depending on the disposition which may be decided upon at the hearing, it is impractical to give detailed information at the time of removal. If the department institutes suit under Chapter 262, more detail will be provided under that chapter.*

**§ 261.508. Incident Report Required; Contents**

(a) The incident report required by section 261.501 shall be made on a form promulgated jointly by the State Office of Community Resource Coordination Groups and the Criminal Justice Policy Council, and shall include such information as may be required by the Council to determine the number and type of incidents, including, but not limited to:

- (1) the name and contact information of the investigating officer;
- (2) the name and age of the child;
- (3) the nature of the conduct;
- (4) the offense such conduct would constitute if committed by an adult;
- (5) the actions taken by the officer, including any referrals made for the child or the family.

(b) The incident report shall be delivered to the department within 24 hours after the initial investigation.

(c) The department shall open a file on the case and immediately transmit a copy by facsimile to the State Office of Community Resource Coordination Groups, with a copy to the local coordination group and the local juvenile probation department.

**Comment**

*Since the actions allegedly committed by these very young children are neither crimes nor juvenile offenses under current law, there is no requirement that law enforcement officers*

*prepare an offense report after investigating. In order to determine the scope of the problem it is necessary to mandate that such cases be documented. The incident [not offense] report begins the process of identifying and tracking these cases.*

**§ 261.509. Coordination of Information Gathering and Services.**

- (a) The local Community Resource Coordination Group shall schedule a meeting of affected agencies within 5 working days after receiving an incident report under this subchapter and shall coordinate efforts to determine what services are appropriate for the child or the child's family.
- (b) The department shall be the lead agency for case management and information gathering purposes, unless a more appropriate lead agency is identified by the group.
- (c) Local representatives from the Department of Protective and Regulatory Services, the Department of Mental Health and Mental Retardation, the Department of Health, the local juvenile probation department, and the independent school district in which the child is enrolled shall participate in the assessment and provision of services under this subchapter, and are authorized to share information concerning the child or family for the purpose of assessment or services.
- (d) The local Community Resource Coordination Group shall coordinate efforts to determine what services are appropriate for the child or the child's family, and schedule additional meetings as necessary to ensure that appropriate services are provided and that accurate and complete information is gathered.

- (e) The local CRCG shall forward information and reports to the state CRCG as required by Chapter 264.

**Comment**

*This section provides the framework for interagency cooperation in the investigation of these cases and the provision of services to the children involved. The Department is the lead agency for all cases in terms of managing the investigation and maintaining a record of activities.*

**§ 261.510. Investigative Responsibilities**

- (a) The department shall investigate the child's home conditions and report to the local Community Resource Coordination Group and the court, if a petition to investigate is filed under this subchapter.
- (b) The local mental health authority shall conduct a mental examination of the child and shall report its findings to the local Community Resource Coordination Group and the court, if a petition to investigate is filed under this subchapter.
- (c) The local juvenile probation department shall investigate the circumstances of the conduct believed to have been engaged in under section 261.501, any prior referrals of the child or the child's family to the juvenile justice system, and information provided by the independent school district in which the child is enrolled and shall report its findings to the local Community Resource Coordination Group and the court, if a petition to investigate is filed under this subchapter.
- (d) The independent school district in which the child is enrolled shall cooperate with the department and with the juvenile probation department in providing information

in its possession concerning the child, to the extent authorized by state and federal law.

**§ 261.511. Petition to Investigate; Request for Initial Hearing.**

If a child is taken into possession under Section 261.501 without a court order, or the department has probable cause to believe the child should be taken into possession under that section, the department shall without unnecessary delay:

- (1) file in a district court a petition, supported by affidavit, for investigation of the child's circumstances;
- (2) request the appointment of an attorney ad litem for the child; and
- (3) request an initial hearing to be held no later than the time specified by section 261.512(a).

**Comment**

*This section tracks Section 262.105 in that it requires a request for a judicial review of taking the child into possession and that the review must occur by the close of the next working day. Unlike Section 262.105, it does not require the filing of a suit affecting the parent-child relationship within that time frame. Rather, it requires a petition to investigate the child's circumstances. For some children taken into possession under this Subchapter, a suit affecting the parent-child relationship will be appropriate, for others mental health or retardation services may be appropriate, and for still others delinquency prevention services may be indicated.*

**§ 261.512 Initial Hearing.**

- (a) The court in which a petition for investigation has been filed shall hold an initial hearing on or before the first working day after the date the child is taken into possession. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession.
- (b) The initial hearing may be ex parte and proof may be by sworn petition or affidavit.
- (c) If the initial hearing is not held within the time required, the child shall be returned to a parent, managing conservator, possessory conservator, guardian, caretaker, or custodian.

**Comment**

*This section tracks Section 262.106 in that it requires an initial hearing on the petition to investigate by the first or at least the third working day to review the lawfulness of taking possession of the child. This is expected to be an ex-parte hearing, as reflected in subsection (b); the "adversary hearing" for this purpose is to be set within 14 days. If initial court approval is not obtained within the time frame allowed, the child should be returned*

**§ 261.513. Decision at Initial Hearing.**

- (a) The court shall order the return of the child to a parent, guardian or caretaker at the initial hearing regarding a child taken in possession under section 261.501 unless the court is satisfied that:
  - (1) the circumstances described in subsection 261.501(b) exist;

- (2) an additional period not to exceed 14 days after the child was taken into possession under Section 261.501 is necessary to evaluate the physical, mental and emotional needs of the child; and
  - (3) return of the child pending the investigation would be contrary to the welfare of the child.
- (b) If the court orders the child to be placed or to remain under the care, custody and control of the department or another person or entity, it shall grant the department or another person or entity the right to care, custody and control of the child pending the hearing under this subchapter.
- (c) A court may return the child to an appropriate parent, guardian or caretaker, but order continued investigation of the child's circumstances and a report to the court at the scheduled hearing.
- (d) The department may file a suit affecting the parent-child relationship pursuant to Chapter 262, or a suit for Services to At-Risk Youth under Chapter 264 without regard to the pendency of a suit for investigation under this subchapter and without regard to the age of the child.
- (e) If the court determines that the circumstances described by subsection (a)(1), (2) and (3) exist, the court shall:
- (1) immediately appoint an attorney ad litem to represent the interests of the child;
  - (2) set a date for the hearing which shall not be later than 14 days after the child is taken into possession under section 261.501;

- (3) order that the department provide written notice of the next hearing to the child's parents, guardian or caretaker, and
- (4) enter orders appropriate for the care custody and control of the child pending the next court hearing.

**Comment**

*This section reiterates the requirements of 261.501, and adds a requirement that the court find that "an additional period not to extend beyond 14 days after the child was taken into the possession of the governmental entity is necessary to evaluate the physical, mental or emotional needs of the child."*

*Subsection (b) allows the court to continue the child in the "care custody and control" of the department for investigation; the term "temporary managing conservator" is not used to avoid kicking off the one year time line to termination in Chapter 263.*

*Subsection (c) supposes that in some circumstances it may be appropriate to return the child to his or her home but continue with the investigation of the child's needs and report those findings to the court at a hearing.*

*Subsection (d) attempts to make clear that orders under this subchapter do not prevent or "trump" any action the department may take for protection of the child under Chapter 262 or 264, to allow for concurrent efforts to complete the investigation and begin remedial services.*

*Subsection (e) requires that if the child is to remain outside the home, the court must appoint an attorney ad litem, schedule a hearing on the investigation within 14 days, require the department to get notice to the parent or custodian and enter appropriate orders for the care custody and control of the child pending the hearing.*

**§ 261.514. Hearing at Conclusion of Investigation; Findings of the Court**

- (a) Unless the child has already been returned to an appropriate parent, guardian or caretaker and the temporary order, if any, has been dissolved, a hearing shall be held not later than the 14th day after the date the child was taken into possession under Section 261.501.
- (b) At the conclusion of the hearing, subject to subsection (e), the court shall order the return of the child to an appropriate parent, guardian or caretaker unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:
  - (1) proceedings for temporary conservatorship of the child are warranted,
  - (2) proceedings to secure services for the child as an at-risk youth under Subchapter D, Chapter 264.301 are warranted; or
  - (3) the child has been accepted by, admitted to or committed to an inpatient mental health facility, and no orders for conservatorship are needed.
- (c) If the court concludes that proceedings for temporary conservatorship are warranted and have not already been initiated by the department, it shall set a hearing for temporary conservatorship under section 262.205 not later than 14 days after the date of the order; the department shall file a petition under section

262.113 and cause a copy to be served on all persons found by the court to be appropriate parties.

(d) If the court concludes that proceedings to secure services for the child as an at-risk youth are warranted and have not already been initiated by the department, it:

(1) shall order the department to file a civil action under Section 264.303, to request the court to determine that the child is an at-risk child, in which event the requirement of Section 264.302(a)(1) that the child must be at least seven years of age shall not apply;

(2) may order that the child continue in the care, custody and control of the department until an at-risk hearing is held under Section 264.304, but in no event for longer than 30 days.

(e) If at the time of the hearing, the child is receiving inpatient mental health services, the court may order the Department of Mental Health and Mental Retardation to return possession of the child when treatment is no longer needed to the department, another person or entity, or the child's parent, guardian or caretaker as the court believes appropriate under the circumstances.

**Comment**

*This section, dealing with the adversary hearing, is modeled on Section 262.201. It envisions a hearing before a district court in which the court has four choices: (1) return the child to his or her home without further restrictions, (2) order proceedings respecting neglect or abuse of the child to be initiated, (3) order initiation of proceedings to secure services for the child as an at-risk child, in which case the minimum age for STARS*

*services does not apply, or (4) defer to the appropriate court for proceedings to secure care for the child as a child in need of mental health services and dismiss the suit for investigation.*

## **Amendment to Family Code Chapter Containing MOU requirement**

*The provisions below would amend the Family Code chapter containing the MOU requirement that resulted in creating of the CRCGs [sec. 264.003] to specify the coordination and data collection function of the State office of Community Resource Coordination Groups relating to children alleged to have committed violent acts. It also requires a study of the population and issues involved by the Criminal Justice Policy Council. The State Office of Community Resource Coordination Groups is designated as the central repository of information and reports relating to under 10 offenders. The Policy Council should be able to perform the mandated study and analysis working with information at this single location rather than travelling to each location where an incident was reported.*

### **Chapter 264, Family Code**

(new subchapter below)

#### **Subchapter J. Coordinating Services for Children Alleged to Have Committed Violent Acts**

##### **§ 264.801. Definitions.**

In this subchapter, "Community Resource Coordination Group" means a coordination group established under the memorandum of understanding adopted under section 264.003.

**§ 264.802. Report of Investigation of Violent Act by Child Under 10.**

- (a) The department, upon receiving an incident report as mandated by subchapter F, Chapter 261, shall immediately send the report to the State Office of Community Resource Coordination Groups.
- (b) The State Office of Community Resource Coordination Groups shall immediately open a file on the incident and notify the local Community Resource Coordination Group serving the community in which the incident occurred.
- (c) The local Community Resource Coordination Group will assemble appropriate local community participants and schedule a meeting of affected agencies within five (5) working days after receiving a report of an investigation under this chapter.

**§ 264.803. Funding for Certain Services.**

The State Office of Community Resource Coordination Groups shall be appropriated funding to provide services to children and families who are not eligible to receive services through existing avenues.

**§ 264.804. Reporting Requirements.**

- (a) The Texas Department of Mental Health and Mental Retardation shall conduct an assessment of all children referred under subchapter F, Chapter 261 to determine the need for inpatient or outpatient treatment and will report its conclusions to the local Community Resource Coordination Group. The referral will serve as legally adequate consent for the Texas Department of Mental Health

and Mental Retardation or the local mental health authority to conduct the assessment.

- (b) The Department of Protective and Regulatory Services shall investigate all reports in which there is an allegation that the child has been abused or neglected in the home, track the findings of these investigations and any services provided including foster placement if removal from the home is necessary, and will report this information to the local Community Resource Coordination Group.
- (c) The local juvenile probation department shall investigate the circumstances of the conduct believed to have been engaged in under Section 261.501(b), any prior referrals of the child or the child's family to the juvenile justice system, and information provided by the independent school district in which the child is enrolled and report this information to the local Community Resource Coordination Group.

**§ 264.805. Information Collection.**

- (a) The local Community Resource Coordination Group shall collect information and reports generated in the course of investigation and the provision of services to children under Subchapter F, Chapter 261 and forward the information and reports to the State Office of Community Resource Coordination Groups for the Criminal Justice Policy Council.
- (b) The State Office of Community Resource Coordination Groups shall coordinate and facilitate the reporting requirements under this subchapter to ensure timely

and accurate collection and retention of information necessary for the study required by this subchapter.

**§ 264.806. Study and Recommendations for Legislative Action.**

- (a) The Criminal Justice Policy Council shall prepare a study based upon the information provided under this subchapter and make recommendations to the 78th Legislature for an appropriate system of response.
- (b) The report prepared by the Criminal Justice Policy Council will address each of the following:
  - (1) Number, location, and demographics of the children identified under this subchapter;
  - (2) Percentage of the violent acts committed requiring "sexual offender" treatment or therapy;
  - (3) Percentage of children referred and determined in need of inpatient or outpatient services by the Department of Mental Health and Mental Retardation;
  - (4) Percentage of children referred to the Department of Protective and Regulatory Services and determined in need of services and/or removal from the home.